AUG 31 1944
CHARLES ELMORE CROPLEY
CLERK

# Supreme Court of the United States.

OCTOBER TERM, 1944.

No. 293.

MUTUAL BENEFIT HEALTH & ACCIDENT ASSOCIATION,
*Petitioner,*

*v.*

UNITED CASUALTY COMPANY, CRAFTSMAN INSURANCE COMPANY, AND HAROLD P. LaCROIX,
*Respondents.*

## BRIEF OF RESPONDENTS UNITED CASUALTY COMPANY AND CRAFTSMAN INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RALPH E. TIBBETTS,
Attorney for Respondents.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

## Index.


| | Page |
|---|---|
| I. Prior opinion | 1 |
| II. Jurisdiction | 2 |
| III. Statement of case | 2 |
| IV. Argument | 4 |


## Table of Authorities Cited.


CASES.

| | |
|---|---|
| Boston Water Power Co. v. Gray, 6 Met. 131 | 7 |
| Phaneuf v. Corey, 190 Mass. 237 | 7 |

STATUTES.

| | |
|---|---|
| Judicial Code as amended, sec. 240 (a); 28 U.S.C. sec. 347 (2) | 2 |

TEXTBOOKS.

| | |
|---|---|
| 2 Ruling Case Law, p. 392, par. 36 | 7 |
| Sturges, Commercial Arbitration (1930 Ed.) p. 296 | 7 |

# Supreme Court of the United States.

October Term, 1944.

**No. 293.**

MUTUAL BENEFIT HEALTH & ACCIDENT ASSOCIATION,
*Petitioner,*

*v.*

UNITED CASUALTY COMPANY, CRAFTSMAN INSURANCE COMPANY, and HAROLD P. LaCROIX,
*Respondents.*

## BRIEF OF RESPONDENTS UNITED CASUALTY COMPANY AND CRAFTSMAN INSURANCE COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

### I.

### Prior Opinion.

The judgment of the Trial Court and the memorandum of opinion of that Court are found on pages 33 to 38 of the record, and the opinion of the Court of Appeals, confirming the decision of the Trial Court, appears at pages 44 to 51 of the record and is reported in 142 Fed. (2d) 390.

## II.

## Jurisdiction.

This case comes here on petition for writ of certiorari to the First Circuit Court of Appeals under the provisions of Section 240 (a) of the Judicial Code as amended, being Section 347 (2), Title 28, United States Code.

## III.

## Statement of Case.

The petitioner made a written agreement with the United Casualty Company for the taking over of the latter company's hospitalization expense insurance policies, which provided among other things that United Casualty Company should pay "cash" to the petitioner "sufficient to constitute an adequate reserve to adjust and pay all claims" under insurance policies "incurred prior to July 1, 1940," and not previously paid by United Casualty Company (Rec. 17).

The parties agreed that such claim reserve as fairly estimated by them amounted to $51,000 (Rec. 18). The parties agreed further that the "actual amount" of the claim reserve should "be ascertained by the Insurance Department of the Commonwealth of Massachusetts," and, when so ascertained, any necessary adjustments would then be made (Rec. 18).

It was agreed that, if a claim had been "incurred prior to July 1, 1940," and the petitioner paid an amount in settlement of same, the amount so paid should be the reserve on that particular claim. No controversy has at any time existed as to the meaning or application of this clause (Rec. 19, par. 4).

It was further agreed that "in the event of any disagreement between the Company and the Association's auditor

with respect to the incurred date of any claim, the Insurance Department's examiner shall resolve the doubt" (Rec. 19, par. 4). In open court the parties conceded that this provision of the contract should be interpreted to mean that the decision of the examiner should be final and binding on the parties (Rec. 37).

A disagreement arose between the petitioner and United Casualty Company as to whether, when hospitalization in a childbirth case occurred after July 1, 1940, in ascertaining the date when the claim was incurred, the date the pregnancy "first became apparent" should be determinative. The insurance policies themselves covered hospitalization only, and no claim could arise until the hospitalization occurred (Rec. 12). The parties, however, in clause 4 of their contract had agreed to a provision which, in cases to which it applied, would result in a claim being incurred as of a date "sickness first became apparent" rather than the date of hospitalization (Rec. 19).

The parties, not being able to agree that the term "sickness" as used in clause 4 of the contract was intended to be inclusive of the condition of pregnancy so that when pregnancy "first became apparent" the claim was incurred, referred their disagreement as to the incurred date of a maternity case to the insurance examiner to "resolve the doubt."

The examiner decided the term "sickness" as used in the contract did not include pregnancy and that the incurred date of each maternity case as it was presented should be determined by reference to the date of hospitalization. He determined the amount of the actual claim reserve on that basis.

The amount of the actual reserve as determined by the examining representative of the Insurance Department of the Commonwealth of Massachusetts was $50,412.96 (Rec. 27; Court Opinion, Rec. 51) as against the $51,000 the par-

ties estimated in advance and as compared with the sum of approximately $120,000 claimed by the petitioner on its interpretation of the contract term "sickness."

It was stipulated and conceded by the parties, as appears in the memorandum opinion of the Court (Rec. 37), that the examiner "was the proper person to act as arbitrator; he proceeded in good faith; he did not consider topics beyond the authority conferred upon him; he completed his work and made a final report to the parties and his only mistake, if he made one at all was a mistake of law in the construction he gave to the agreement in its application to maternity cases."

## IV.

## Argument.

The petitioner's contention is that the contract of the parties contained "terms of submission" binding on the arbitrator and with which the arbitrator did not comply; further, that to uphold his decision is therefore contrary to the controlling law of Massachusetts.

It is stipulated that the arbitrator "did not consider topics beyond the authority conferred upon him" (Rec. 37); "that he did not exceed the authority conferred upon him," but the petitioner contended that he "misconstrued the provisions of the contract dealing with the incurred date of claims" (Rec. 39). In other words, the only error of the arbitrator, if any, as conceded by the petitioner, is that in applying the contract, as he was obliged to apply it in the performance of his duties, he made a mistake of law (Rec. 37).

The clauses of submission as set out in the contract are found in paragraphs 1 and 4. Paragraph 1 provides: "As soon as practicable after July 1, 1940, the actual amount of such claim reserve shall be ascertained by the Insurance

Department of the Commonwealth of Massachusetts without expense to either of the parties hereto" (Rec. 18). Paragraph 4 provides: "In the event of any disagreement between the Company and the Association's auditor with respect to the incurred date of any claim, the Insurance Department's examiner shall resolve the doubt" (Rec. 19).

The contract nowhere sets out any limitations on the examiner in resolving a dispute that might arise. When a disagreement developed as to the incurred date of claims in childbirth cases, that part of the arbitration reference set out above and appearing in paragraph 4 of the contract came into operation, and the disagreement was referred to the examiner to resolve the doubt. The determination of this disagreement by the examiner necessitated the construction by him of the clause in the contract dealing with the incurred date of claims in certain specified cases. The examiner interpreted such clause in good faith and applied his interpretation to each maternity case as it subsequently became involved in the determination of the actual claim reserve.

On such a state of facts, the petitioner claims in its "Specification of Errors" that the examiner "admits" he did not follow a "formula" which the petitioner contends was embodied in the "terms of submission." The petitioner gives to the clause in paragraph 4 which binds the parties to a certain rule in ascertaining the incurred date of claims in accident and sickness cases an interpretation which would also include childbirth cases. The petitioner then contends that this clause was a "formula" which the examiner had to follow, subject to the condition that in following it the examiner was required to interpret it in the same way the petitioner interpreted it. There is nothing in the agreement which places such limitation or condition on the examiner when in settling a disagreement he had to construe and apply the clause in paragraph 4.

It is asserted that the examiner in dealing with hospitalization for childbirth cases failed to consider each claim on its merits. There is no contention that the amount payable to the insured on each maternity claim was not separately determined according to the merits of the claim, but the contention is rather that, when the examiner interpreted the word "sickness" not to include pregnancy, there resulted a failure to consider each maternity case on its merits. This in the face of the examiner's statement (Rec. 32, par. 4) that he "determined the incurred date in all so-called maternity cases as the date of hospitalization of the insured, that is, the date when said insured entered the hospital, and if such entry into a hospital was not on or prior to July 1, 1940, determined that the claim made for hospitalization should not be set up or allowed as a claim incurred prior to July 1, 1940."

He goes on to state that, taking maternity cases as a whole, he "has ruled and resolved that in all maternity cases where the insured was not in the hospital on or prior to July 1, 1940, liability therefor was placed by said contract upon the Petitioner herein." He thus stated his decision in resolving the dispute that had arisen between the parties concerning the meaning of their contract involving the "incurred date" of claims, and specified his procedure in applying the rule as so interpreted.

The examiner was not construing a clause that in any way dealt with the extent of his powers as arbitrator, but a clause rather that had to do with the respective rights of the parties under the terms of their contract and within the limitation of the subject-matter submitted to his jurisdiction. The petitioner's contention is in effect that the examiner, when called upon to apply the terms of the contract to the resolving of a disagreement that had arisen, should have interpreted the contract in accordance with the petitioner's interpretation rather than accepting the interpre-

tation of the other parties to the contract. Even if the examiner were in error in interpreting the contract as he did, the petitioner is bound and concluded by the examiner's decision, according to the well-established law of Massachusetts.

*Boston Water Power Co.* v. *Gray,* 6 Met. 131, at pp. 165, 166 and 167.

*Phaneuf* v. *Corey,* 190 Mass. 237, at pp. 245 and 247.

2 Ruling Case Law, p. 392, par. 36.

Sturges, Commercial Arbitration (1930 Ed.) p. 296.

It is respectfully submitted that the petition for certiorari should be denied.

RALPH E. TIBBETTS,
Attorney for Respondents.